

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CENTRAL DIVISION

No. 05-40073-FDS

JAMES J. SANDLER, Individually and as Trustee
of the TOWN PAINT & SUPPLY CO., INC.
401(k) PROFIT SHARING PLAN, and
TOWN PAINT & SUPPLY CO., INC.,

Plaintiffs

v.

CIPC SYSTEMS, INC. and
RICHARD A. PERRY,

Defendants

DEFENDANTS' PARTIAL MOTION TO DISMISS

NOW COMES the Defendants, CIPC Systems, Inc. ("CIPC") and Richard A. Perry ("Perry") and move to dismiss the Plaintiffs' state law claims, Counts II-VI (professional negligence, negligent misrepresentation, breach of fiduciary duty, indemnification and contribution) as they are preempted. Defendants also move to dismiss the ERISA claim, Count I, of the Plaintiff, Town Paint & Supply Co., Inc., ("Town Paint") for lack of standing.

Wherefore the Defendants, CIPC and Perry, respectfully request this Honorable Court to dismiss the Plaintiffs' state law claims. Defendants further request that this Honorable Court dismiss the ERISA claim of the Plaintiff, Town Paint & Supply Co., Inc.

Respectfully submitted,

The Defendants,
CIPC Systems, Inc. and
Richard A. Perry,

By their counsel,

s/ Michele Carlucci

George C. Rockas BBO# 544009
Michele Carlucci BBO#655211
WILSON ELSER MOSKOWITZ
EDELMAN & DICKER LLP
155 Federal Street
Boston, MA 02110
(617) 422-5300

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